

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LEE ARTIS BEFFORD NKA AMIN SHAKUR,
Petitioner.

No. 2 CA-CR 2016-0263-PR
Filed October 6, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County
Nos. CR016696, CR017284, and CR017285 (Consolidated)
The Honorable Richard E. Gordon, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Amin Shakur, Tucson
In Propria Persona

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MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 Amin Shakur, formerly known as Lee Befford, seeks review of the trial court's order denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Shakur has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Shakur was convicted of numerous offenses including kidnapping, armed robbery, and burglary; the trial court sentenced him to prison terms including several terms of life imprisonment, some concurrent and some consecutive. Our supreme court affirmed his convictions and sentences on appeal. *State v. Befford*, 157 Ariz. 37, 754 P.2d 1141 (1988), and this court denied relief on his petition for review of the trial court's denial of his petition for post-conviction relief. *State v. Befford*, No. 2 CA-CR 93-0436-PR (Ariz. App. Sept. 23, 1993) (mem. decision). It appears he has since sought post-conviction relief on at least five other occasions before this proceeding.

¶3 In August 2015, Shakur filed another notice of and petition for post-conviction relief. In his notice, he stated he wished to raise claims of newly discovered evidence and a significant change in the law. In his petition, Shakur indicated he was raising various claims, including ineffective assistance of counsel and violation of double jeopardy; cited law related to sentencing, including A.R.S. § 13-116 and *Blakely v. Washington*, 542 U.S. 296 (2004); and claimed that he had recently "become aware of possible issues of appeal within [the] last few months."

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¶4 In his reply to the state's response, Shakur asserted his sentences violated the rule described in *Blakely* and related cases because they had been "enhanced by the sole discretion of the judge." He claimed *Blakely* constituted a significant change in the law that would apply to him retroactively. He also argued his claim should not be precluded, asserting he had "good cause" for his failure to raise it earlier. The trial court summarily denied relief, concluding *Blakely* did not apply retroactively and, in any event, Shakur could not raise his various claims in an untimely proceeding. This petition for review followed.

¶5 On review, Shakur again asserts his sentences violated *Blakely* because they were increased based on facts not found by the jury. But the trial court was correct that *Blakely* does not apply retroactively to defendants whose cases were final when *Blakely* was decided. See *State v. Febles*, 210 Ariz. 589, ¶ 17, 115 P.3d 629, 635 (App. 2005). Shakur's case was final when the time expired for him to seek review of our supreme court's decision affirming his convictions and sentences, which occurred many years before *Blakely* was decided. See *State v. Towery*, 204 Ariz. 386, ¶ 8, 64 P.3d 828, 831-32 (2003). Thus, irrespective of any purported deficiency of counsel or exception to Rule 32.2(a) or 32.4(a), he is not entitled to relief on this ground. Moreover, any claim that his consecutive sentences violated A.R.S. § 13-116 should have been raised long ago, and Shakur has not identified any applicable exception to the timeliness requirement of Rule 32.4(a) that would permit him to raise this claim now.

¶6 We grant review but deny relief.